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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

ATTN: The Honorable Joseph Stirmer  
Administrative Law Judge

RE: Calvary Educational Broadcasting Network, Inc., MM Docket  
No. 92-122, Poplar Bluff, Missouri

Dear Ms. Searcy:

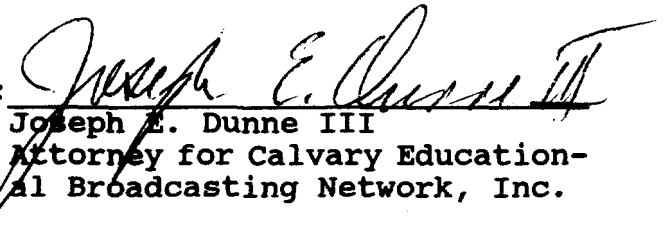
Transmitted herewith on behalf of Calvary Educational Broadcasting Network, Inc. is an original and six copies its "Reply Findings of Fact and Conclusions of Law" filed in connection with the above-referenced docketed proceeding.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

MAY & DUNNE, CHARTERED

By:

  
Joseph E. Dunne III  
Attorney for Calvary Educational  
Broadcasting Network, Inc.

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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Re Application of	)	MM Docket no. 92-122
	)	
CALVARY EDUCATIONAL BROADCASTING	)	File No. BRH-891103UA
NETWORK, INC.	)	
	)	
For Renewal of License of	)	
KOKS(FM), Poplar Bluff,	)	
Missouri	)	

TO: The Honorable Joseph Stirmer  
Chief Administrative Law Judge

**REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

By: Joseph E. Dunne, Esq.  
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TO: The Honorable Joseph Stirner  
Chief Administrative Law Judge

**REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Calvary Educational Broadcasting Network, Inc. (Calvary), by its undersigned attorney and pursuant to section 1.263 of the Commission's Rules, 47 C.F.R. § 1.263 (1993) hereby files its reply to the "Findings of Fact and Conclusions of Law" filed by the Mass Media Bureau on February 5, 1993. In support of its reply, Calvary shows and states as follows.<sup>1/</sup>

**A. Reply Findings of Fact**

1. In paragraph 12 of its findings the Mass Media Bureau states that Calvary never ascertained that Dairrel Denton, who had a booster, had other television sets which weren't hooked up to a booster. Mr. Denton talked with Calvary personnel no less than

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<sup>1/</sup>Calvary's "Proposed Findings of Fact and Conclusions of Law" will be cited as "KOKS fdgs. ¶ \_\_\_\_." "The Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law" will be cited as "MMB fdgs. ¶ \_\_\_\_." As was its practice in its findings, Calvary will not repeat repetitious citations to findings or the record, and will provide a citation only when the previous citation is no longer accurate.

three times and picked up a filter at the station, and he didn't tell Calvary in any of these contacts that he had sets which weren't hooked up to a booster (KOKS fdgs. ¶ 59). Owners of sets with boosters are clearly excluded from those which Calvary was required to resolve interference under section 73.318(b).

2. The Mass Media Bureau also states (MMB fdgs. ¶ 14) that "... in Calvary's view, it had no obligation to eliminate interference to channel 6 because Poplar Bluff is located outside channel 6's grade B contour." While this statement is strictly accurate, the statement does not accurately reflect the record evidence outlined in greater detail in paragraphs 13-14 of Calvary's findings. The record evidence showed that everyone who advised Calvary, as well as FCC personnel, until the Hearing Designation Order, believed that Calvary had no obligation to cure interference to the reception to channel 6. Those who believed this included: two FCC employees, Mrs. Karen Raines and Mr. Poole; Calvary's most vocal adversaries, Mrs. Smith and Mrs. Hillis; both its consulting engineer and communications counsel; even the management of channel 6. The Mass Media Bureau makes no reference to the fact that in every filing Calvary made with the Commission it explicitly or unmistakably stated that it had no obligation to cure interference to channel 6, yet the Commission, while it told Calvary it didn't need to cure interference to "baby monitors, audio transmission devices and electronic musical instruments" (KOKS fdgs. ¶¶ 85, 111) didn't see fit to correct Calvary's

misapprehension until it dropped a footnote (footnote 6) in the Hearing Designation Order.

3. Nor did the Mass Media Bureau's findings refer to the fact that the Commission reinforced the impression that channel 6 was not a protected signal in its critical October 1990 letter, when it noted that the complaints of Mrs. Gray and Mrs. Wynn were, based on Calvary's filings, "resolved," even though the last report filed by Calvary in September 1989 stated that Mrs. Wynn was dissatisfied because the installation of a filter didn't cure interference to channel 6 (KOKS fdgs. ¶ 21). Similarly, in its September 1989 report Calvary reported that Mrs. Gray complained of interference on channels 6 and 8, and that the filter improved reception only on channel 8, yet the Commission's October 30 letter treated the complaint as resolved.

4. The omission of these facts from the findings is significant. The Mass Media Bureau's findings imply that Calvary's position concerning the reception of channel 6 was unreasonable and evidence of its grudging compliance or noncompliance with the rules, when, in fact, Calvary's position was imminently reasonable, supported, as it was, by everyone advising Calvary and not contradicted by the Commission. Moreover, it is neither unbelievable or disingenuous to report a complaint as "resolved" when the complainant admittedly was dissatisfied with its reception of channel 6 if Calvary believed, as it clearly did, that it had no obligation to cure such interference complaints.

5. The Mass Media Bureau's findings also are singularly bereft of any of the record evidence which clearly showed that TV reception in Poplar Bluff generally, and close to the KOKS tower specifically, was poor or marginal before KOKS went on the air. With respect to the area surrounding the KOKS transmitter site, the record is replete with evidence of how poor TV reception was. Mr. Poole noted that three of the four desired TV stations didn't put a measured grade B signal over the ground close to the transmitter site and characterized the signal of the desired television stations as "substandard" (KOKS fdgs. ¶ \_\_\_\_). Mr. Lampe testified extensively concerning the poor television reception in the area, noting that he was often employed to install boosters and special antennas to improve reception (KOKS fdgs. ¶ 34). Mr. Ramage testified that he did not observe the "herringbone" pattern which he testified was characteristic of blanketing interference on the TV sets of any of the homes he visited because the strength of the television signals was so weak and the picture so poor that blanketing interference could not be observed (KOKS fdgs. ¶ 72).

6. This evidence is important in a number of respects. The generally poor reception in the blanketing area, particularly the extremely poor reception noted by Mr. Poole only a few months after KOKS came on the air before any alleged changes were made to the complainants' equipment, strongly suggests that the testimony of several witnesses, particularly Mrs. Smith and Mrs. Hillis, that there reception was "good" or that they got "clear pictures" before KOKS began broadcasting is, at least, exaggerated. The second FCC

report authored by Mr. Moffit contained ample evidence that neither Smith or Hillis received good signals prior to KOKS going on the air. For example, even with KOKS off the air, the report noted that channel 6 came in with a TASSO 5 picture, noted as "no picture, extremely snowy" (KOKS fdgs. ¶ 28). Channel 8 was likewise characterized as a TASSO 4 with an "extremely snowy, unwatchable picture." Similarly, the reception of various channels with KOKS off the air in the Hillis home showed that channel 6 came in as "snowy, with no color," channel 8 as a TASSO 4 with a "very snowy picture." The reception of channels 12 and 15 showed "little if any improvement" with KOKS off the air. Similar experiences were reported in the Adams, Kearby and Farley homes where the reception with KOKS off the air was described in poor terms, and the difference when KOKS was operating was comparatively minor (KOKS fdgs. ¶ 29).

7. This record of poor reception also impacts on the weight the Commission may want to give Mr. Ramage's report which, in almost every instance, concluded that Calvary had failed to restore reception to complainants based primarily or exclusively on the reports of complainants, because the observed differences in reception with KOKS on and off the air was minimal or nonexistent. For example, in reaching the conclusion that Calvary didn't restore reception in the Smith home Mr. Ramage was relying primarily on Mrs. Smith's accounts, because the actual observed differences was "not significant" (KOKS fdgs. ¶ 73). In fact, in the Smith home, the only observed difference in reception when KOKS was off the air

was on one of three sets, and only very minor differences in two channels. The observed differences in the Hillis' home were characterized by Mr. Ramage as "very slight" (KOKS fdgs. ¶ 74). In the Diel home there was only one observed difference on three TVs, in the reception of one channel on one TV that went from a TASO 4 to a TASO 3 when KOKS went off the air (KOKS fdgs. ¶ 75). Observed differences at other homes were likewise very minor, and in a few homes (Mrs. Libla, the Kearbys) Mr. Ramage's conclusions were based entirely on what people told him, because there were no observed differences in reception when KOKS was off the air (KOKS fdgs. ¶¶ 73-76).

8. The reception difficulties to which the record attests is also an important backdrop against which to compare Calvary's efforts to cure the blanketing interference. The Mass Media Bureau's findings suggest that Calvary's efforts to cure the blanketing interference were ineffectual and grudging. Both accusations overlook the record evidence which shows that Calvary was operating in an extraordinarily difficult technical environment, where the comparative weakness of the desired TV signals made any attempt to filter out the KOKS signal extremely difficult. This technical environment required Calvary to experiment with different filters, some of which clearly did not work. Nor can the effort Calvary devoted to the resolution of the blanketing complaints be doubted when it devoted the almost full time efforts of one of its two full time employees to the resolution of blanketing complaints for months at a time, made



hundreds of telephone calls and home visits, and tried several different filters in succession.

9. The Mass Media Bureau in paragraph 20 of its findings notes that Calvary didn't report that its filters didn't work for the Smiths, and claimed only that the Smiths would not cooperate. Calvary suggests that any fair reading of Calvary's responses in December 1988 and January 1989 concerning the Smiths conveyed that Calvary's efforts to cure the interference were unsuccessful. For example, Calvary's December 6, 1988 filing reported that Calvary installed a filter on the Smith set, yet the Smiths' complaints continued (MMB Ex. 15, p. 2). Nor can the Mass Media Bureau so easily overlook the record evidence that shows that the Smiths were hardly cooperative. Mrs. Stewart testified that she called Mrs. Smith several times to ask if Calvary could install a filter on her outside antenna and was refused--the first time because the Smiths were going to replace the antenna; the second time because Mrs. Smith didn't want Calvary personnel on her roof; and, the third time because she was instructed by her attorney in the local lawsuit not to have Calvary personnel on the property until the suit was settled (KOKS fdgs. ¶ 38). Mrs. Smith was angry about the station before it went on the air for reasons unrelated to interference, and made sure the Stewarts knew that she was going "... to take it [the tower] down" (KOKS fdgs. ¶ 7). Filing a lawsuit against Calvary asking for unspecified money damages, as did the Smiths, usually is adversarial and certainly compromises the ability of Calvary to respond to the Smiths' complaints. So is

canvassing the entire county to generate complaints about the station's alleged interference. Calvary's reports concerning the Smiths' non-cooperation clearly were not a fabrication.

10. The Mass Media Bureau also takes Calvary to task (MMB fdgs. ¶ 21) for not attempting to cure the Hillis' complaints because they did not provide a written list of their complaints despite numerous written complaints filed with the Commission. While strictly true, the Mass Media Bureau ignores evidence which makes Calvary's explanation credible, even understandable. At the outset, Mrs. Hillis hadn't proved to be cooperative when Mrs. Stewart spoke to her twice in November-December 1988, when she twice refused a home visit because "your filters don't work" (KOKS fdgs. ¶ 40). Despite that fact, the fact that Mrs. Hillis was a plaintiff in a lawsuit requesting money damages pending at the time, and against the advice of local counsel, Mrs. Stewart and Mr. Lampe went to the Hillis home to attempt to resolve the complaint. Significantly, the Hillis home was the only home that Calvary asked Mr. Lampe to visit prior to February 1991.

11. At the outset, Mrs. Hillis, the main complainant was not home, but Mr. Hillis was. Mr. Lampe testified that Mr. Hillis complained about everything in the house, including his telephone. Because of the number of complaints Mr. Lampe asked Mr. Hillis to write down a list of complaints because, from Mr. Lampe's experience, if you didn't get someone with that many complaints to write them down and quantify them one could never satisfy them because they would call the next day with a new problem. Calvary

never received the list, a fact which they reported to the Commission (MMB Ex. 23, p. 3). The Hillis', who clearly read each Calvary filing at the Commission never contradicted Calvary's account, and also never provided a list of complaints to Calvary or to Mr. Lampe directly. Yet some six months later Mrs. Hillis filed a petition to deny the application with the FCC which outlined her complaints again. That is hardly evidence of cooperation. When Calvary came to the Hillis home with an independent TV repairman the Hillis would not provide Calvary or Mr. Lampe with a written list of complaints except as part of a complaint filed months later to the FCC. The Hillis' then complained to the Commission that Calvary didn't respond to their complaints despite their refusal to comply with a reasonable request for an accurate and written list from which Calvary's engineer could work.

12. The Mass Media Bureau's finding in paragraph 24 that Calvary inaccurately reported the resolution of complaints of Mary Wynn and Joanne Gray. The record evidence is more complex and shows that Calvary did not report these complaints resolved. In January and February of 1989 both Mrs. Wynn's and Mrs. Gray's complaints were reported as resolved, based on Mrs. Stewart's belief that Calvary was not required to cure interference to channel 6 (KOKS fdgs. ¶ 20). In its September 22, 1989 report to the Commission Calvary noted that Calvary twice visited Mrs. Wynn's home to install filters, that neither of them cured the interference to channel 6, and that Mrs. Wynn was "dissatisfied" (KOKS fdgs. ¶ 21). Likewise, Mrs. Gray was reported as complaining

of interference to channels 6 and 8 and that the installation of a filter cured interference to channel 8. In one instance Calvary affirmatively informed the Commission of the complainant's continued dissatisfaction and in both instances Calvary reported that it did not cure complained of problems with channel 6. Calvary clearly communicated to the Commission, using contemporaneously prepared notes, that it had not cured the problems of which these two women complained. A year later, however, in its October 1990 letter, the Commission completely overlooked Calvary's September 22, 1989 report and noted the complaints as resolved based on Calvary's earlier reports--an action which could only have the effect of reinforcing Calvary's belief that it need not cure interference to channel 6.

13. Similarly, the Mass Media Bureau also accuses Calvary of misleading the Commission in its January and February 1989 reports by concealing that it "... almost never resolved complaints of KOKS interference to radios" (MMB fdgs. ¶ 25). The record shows, to the contrary, that Calvary responded to complaints about radios when the complainants made those complaints to Calvary. Mrs. Stewart testified that during hundreds of telephone calls and home visits only four people even mentioned radios (KOKS fdgs. ¶ 16). Mr. Hillis complained of interference to the radio during the home visit in March 1989, but that complaint, among Mr. Hillis' many others, the Hillis' would not commit to writing so that Calvary could attempt to cure them. Two other people complained of interference to radios, Mrs. Wynn and Mrs. Anderson, and filters

were installed by Mrs. Stewart on their radio sets. Mrs. Gray complained to Mrs. Stewart about interference on her radio set. Mrs. Gray did not testify, however, that Mrs. Stewart refused to consider curing interference to her radio reception, but that she turned on her radio and complained of a loud buzz on her AM band, which Mrs. Stewart said she couldn't fix (KOKS fdgs. ¶ 16). Mrs. Gray did not remember if she ever mentioned the interference to the FM band. Mrs. Stewart denies that she refused to try to fix the Smiths' and Hillis' radios during her visit to their homes in 1991, and her testimony is supported by Mr. Lampe (KOKS fdgs. ¶ 16). It also is more internally consistent. Knowing as she did that the FCC requires Calvary to cure interference to radios (KOKS fdgs. ¶ 12), why would Mrs. Stewart flatly deny to fix Mrs. Smith's or Mrs. Hillis' radio, which she could guarantee would be reported to the FCC, but attempt to fix Mrs. Wynn's or Mrs. Anderson's radios? Mrs. Stewart's testimony concerning the lack of complaints about radio interference is supported by Mr. Lampe, who testified that he never heard anyone complain of interference to their radios in the 105 home visits in which he participated, and also by Mr. Moffit, whose report concludes that KOKS interference to FM receivers "... was not a major concern of complainants" (KOKS fdgs. ¶ 29).

14. The Mass Media Bureau takes Calvary to task in paragraph 27 for not contacting complainants again once they made another complaint. That is true for a few complainants, such as Sandra Durbin, which Calvary admits it "just missed" (KOKS fdgs. ¶ 57). The record shows, however, that Calvary made multiple visits to

many complainants trying to resolve their problems before the 1991 home visits, including: Mrs. Wynn (KOKS fdgs. ¶ 43); Mrs. Piper (KOKS fdgs. ¶ 44); and, the Freemans (KOKS fdgs. ¶ 49).

15. In its report of Mr. Poole's inspection, the Mass Media Bureau's findings do not include that Mr. Moffit noted that the tuner on the Smith set was in poor repair, causing problems in receiving channel 8 (KOKS fdgs. ¶ 28). Mr. Ramage noted the same problem with the Smith set in 1992 (KOKS fdgs. ¶ 73). Calvary is not, of course, responsible for "malfunctioning or mistuned receivers." Section 73.318(b).

16. In paragraph 33 the Mass Media Bureau notes that Calvary "did not inform the Commission of subsequent complaints." The complaints against Calvary were collected, however, by Mrs. Smith and Mrs. Hillis and forwarded directly to the FCC (KOKS fdgs. ¶ 11). The FCC then forwarded the complaints to Calvary who saw them for the first time. Moreover, the FCC also kept track of the complaints, providing, for example, a computer print out which categorized the complaints as to the date filed, undated petitions, and complaints which "lacked sufficient specificity ..." to resolve (MMB Ex. 24, p. 1).

17. Calvary is faulted in paragraph 34 for failing to report that it had, among other things, failed to reimburse Mrs. Piper for the installation of a booster. The record indicates that Mrs. Piper installed a booster because she wanted to better her reception on channel 23, and that her decision to install a booster had little or nothing to do with any purported blanketing

interference from KOKS (KOKS fdgs. ¶ 45). In point of fact, the installation of a line booster increased the interference received to channel 6 (which is why the Commission's rules exempt boosters) rather than remedied it--a clear indication that Mrs. Piper's installation had nothing to do with Calvary interference. There is no indication, even now under Commission rules, that a radio station is required to pay for improvements to a person's antenna system for purposes other than curing blanketing interference. If that were the case all noncommercial radio stations would be subjected to an almost unlimited liability.

18. Moreover, the rule is clear that the blanketing rules do not apply to those with boosters. It is not self-evident that the rules require a station to reimburse a complainant for the installation of equipment which is not designed to cure interference and which the Commission's own rules establish as exempt from the rule. Finally, until the Commission dropped another footnote in its Hearing Designation Order (footnote 17) stating that "a broadcaster's preexisting obligation to correct a blanketing problem is not obviated by a complainant's subsequent attempt to improve its reception by purchasing a booster amplifier," there is not a single case or recorded instance where the Commission required a station subject to the blanketing rule to pay for the installation of exempt equipment such as a booster.

19. The Mass Media Bureau states in paragraph 36 that "inexplicably" Mrs. Stewart did not review a complainant's file prior to visiting the home. The record shows, however, that Mrs.

Stewart's conduct is not inexplicable at all. Mrs. Stewart testified that she had reason, given their source, to suspect the accuracy of the written petition complaints which she received from the FCC. In some instances the petition did not seem to reflect the actual complaint (KOKS fdgs. ¶ 19; See also, MMB Ex. 19, p. 3, and MMB Ex. 21, p. 27). The complaints were altered, in some instances. Several complainants told her that their problem was with channel 6, but the petitions had more channels marked. One woman told her that she really had no complaint but signed one to satisfy Mrs. Smith and Mrs. Hillis. It is not carelessness or heedlessness to suspect the accuracy of petitions collected in the heated atmosphere of a petition drive. And, while it now seems naive and certainly ill-advised, it was not evidence of guile, but rather the lack of it, for Mrs. Stewart to depend on her neighbors and other residents of a small community to honestly express their concerns to her in telephone conversations and during visits to their homes.

20. The Mass Media Bureau also argues that KOKS personnel told Smith, Hillis, and Mr. Beckham that they would fix only one TV set per residence. Except for the testimony of Mrs. Smith, Mrs. Hillis, and Mr. Beckham, all of which Mrs. Stewart, supported by Mr. Lampe, denies, no one testified that Mrs. Stewart refused to fix a second set if asked to do so, and, in fact, Mrs. Stewart worked on more than one set in many homes, including roughly 10 percent of the homes visited in 1991. The Adams, for example, had four filters installed on their sets (KOKS fdgs. ¶ 32).



21. Calvary did refuse to install filters on all three TV sets of Mrs. Christian, but did so, according to Mr. Lampe, not because of any policy about not fixing more than one set, but because her planned television installation--running all three televisions off one line from the booster--required only one filter (KOKS fdgs. ¶ 52). Reviewing the wiring diagram of Mrs. Christian's installation in Mr. Ramage's report shows that Mrs. Christian did exactly what Mr. Lampe advised her to do (MMB Ex. 1, p. 50).

22. In paragraph 53 the Mass Media Bureau notes that the Hearing Designation Order instructed Calvary to cure interference to channel 6, but that it has not done so nor informed complainants of its obligation to do so. The Mass Media Bureau's comment is an example of the Commission's myopic and arbitrary attitude toward Calvary. For three years the Commission carefully refrained from telling the Calvary that it is responsible for curing interference to channel 6, despite repeated opportunities to do so, and then designates the station's application for hearing for, among other things--not curing interference to channel 6. The Mass Media Bureau also ignores the fact that Calvary, although it did not then believe it had a legal obligation to do so, specifically requested that Mr. Lampe find a filter that would work with channel 6 before it made its home visits in February 1991. Finally, having designated the application of a small town noncommercial FM station for hearing, a station which has never had more than two full time employees, with all the financial and personal demands that such a

hearing requires, the Bureau faults Calvary for neglecting to undertake another extensive and expensive attempt at solving the channel 6 problem when it is absorbed in a hearing process. This is particularly unfair to suggest that Calvary engage in such an effort in the charged and heated political atmosphere generated by this hearing, of which the Bureau is well aware. How much cooperation would Calvary likely receive, or how effective would be its likely curative efforts, when its efforts most likely would be subject to TV coverage, or be done in the homes of potentially hostile witnesses? In sum, it is simply patently unfair to expect a small radio station with a full time staff of two to undergo a hearing and an extensive public campaign at the same time.

23. In paragraph 58 of its findings the Mass Media Bureau states that Mr. Stewart testified that Mr. Meador was in the transmitter building with him. Admittedly Mr. Stewart's testimony is not a model of clarity on this point. He first testified that Mr. Meador was never in the building with him, then, in response to a question from Mr. Shook, testified that he was, then corrected his testimony to affirm that Mr. Meador was never in the building with him (Tr. 1113, 1114, 1119).

#### B. Conclusions of Law

24. In its conclusions the Mass Media Bureau states that Calvary chose to locate its tower in a populated area and should have recognized the service disruption that might occur. The record shows that Calvary located the tower for reasons which were entirely unrelated to FM blanketing concerns, of which Calvary's

principals were entirely ignorant until the first complaints came in (KOKS fdgs. ¶ 6). Calvary's principals, as the record makes so clear, were farmers wholly without experience in the broadcast field who depended on professionals for help--specifically their consulting engineer. Mr. Fisher made the subjective judgement, which he did not discuss or check with Calvary's principals, concerning whether the area was populated or not by counting the number of houses noted on a topographic map. Given the nature of the evidence on hand, the wholly subjective nature of the question, Calvary's response was clearly not "... wholly unreasonable" and "not based on fact."

25. The Mass Media Bureau's conclusions also repeatedly fault Calvary for not going off the air when it visited people's homes. The Bureau's argument is facile and seemingly unimpeachable, until one considers what following that procedure would have required of Calvary and the station. The procedure clearly was appropriate for the FCC, which visited a limited number of homes (the most of which was 14), over a limited number of days, at hours which were largely convenient to the Commission, and which could be assured both of the complainants cooperation and the complainants' assumption that the Commission was acting in good faith. Calvary had to deal with literally hundreds of complaints over a number of months with people who were not necessarily cooperative. Even the FCC inspectors noted that some complainants wouldn't believe the station was off the air even when a spectrum analyzer showed that it was (KOKS fdgs. ¶ 73).

26. To comply with the Bureau's facile suggestion would require the station to go off the air at irregular times for irregular intervals over a period of months, on literally hundreds of occasions. How could Calvary run a radio station that was constantly being turned off at odd times for odd intervals? How could it keep its audience, or fulfill its program commitments under such circumstances? What seems so easy and sensible when applied to a limited number of homes, or when suggested here, becomes an absolute nightmare in the real world where radio stations must operate, fulfill programming commitments and attempt to satisfy a listening audience.

27. Likewise, the Bureau faults Calvary for never asking what reception was like before KOKS was on the air. The reason for this "failing" is also quite simple. As Mr. Ramage acknowledged, there is no way to determine what reception was like before Calvary went on the air. That determination is not only wholly subjective, since there are no objective verifiable standards for picture quality, but there is no way to account for fading memory or the fact that there was a great deal of testimony that TV reception varied depending on the time of day and weather because of the great distances between Poplar Bluff and the stations' transmitter sites. There can never be an exact correspondence between "before" and "after" because not only is the very concept of picture quality subjective, there is no way that either Calvary or the FCC could test to determine if the picture quality at the time of the test matched picture quality on a specific date with the same weather

and atmospheric conditions. Calvary tried to get complainants a watchable picture without visual blanketing interference, a phenomenon which at least had some objective basis in fact. In this regard, it should be noted that almost all of the people whose homes Calvary visited in 1991 agreed with Calvary's description of their signal quality, and that Calvary removed, according to Mr. Lampe who went on the visits in February 1991, and Mr. Ramage, all visual evidence of FM blanketing in the sets it worked on.

28. In paragraph 69 the Mass Media Bureau accuses Calvary of not curing interference to homes with boosters. Sets with boosters or preamplifiers, according to FCC rules, are exempt from the blanketing rules. Calvary was not required to do anything to sets with boosters. When, for example, Calvary visited Mr. Crutchfield's home and installed filters on his antenna line from his booster to his TV sets (KOKS fdgs. ¶ 56), Calvary was going beyond what the Commission rules required.

29. The Mass Media Bureau misstates the record when it alleges that Calvary never visited a home when it had supposedly resolved a complaint (MMB fdgs. ¶ 76). The record shows just the opposite. For example, Calvary reported the Mrs. Wynn's complaint as resolved in February of 1989, but went to her home again in response to a subsequent complaint to install a different filter (KOKS fdgs. ¶ 43).

30. Based on this incorrect factual basis, the Mass Media Bureau then moves to a breathtakingly broad conclusion from Calvary's alleged failure to visit homes in response to a

subsequent complaint: "... the only reasonable inference to be drawn is that Calvary intentionally ignored legitimate complaints" (MMB fdgs. ¶ 76). To reach that conclusion, however, the Mass Media Bureau overlooks or ignores a wide variety and great volume of record evidence which suggest there were a number of reasons other than intentional neglect which might result in Calvary not responding to subsequent complaints, or as Mrs. Stewart testified with respect to Mrs. Durbin, that a subsequent complaint was "just missed." The record shows that Calvary was initially handicapped by reliance on supposedly experienced professionals, like Mr. Baggett and Mr. Abernathy, who did absolutely nothing to respond to the complaints and then quit the station without warning. This lack of professional assistance was particularly devastating in view of the very difficult conditions for reception in the area and the extremely weak signals of the desired television stations. Calvary was distracted by a lawsuit demanding money damages which was pending for almost a year. It was limited by a view of its obligations under the law concerning the reception of channel 6 which the Commission was to wait three and one half years to correct. Calvary was confounded by antenna fires, arcing, bullet holes in its transmission line and repeated equipment failures which resulted in the station operating for over half of the time from the station's on-air date to October 1991 at less than the station's authorized power. Calvary faced the unrelenting and organized hostility of its neighbors, whose hostility, in the case of Mrs. Smith, predated the station's commencement of operation and

had little to do with blanketing interference. Finally, Calvary was buried under the financial, administrative and personnel demands of attempting to respond, always within an FCC imposed deadline, to over 1,000 complaints, many of which were hard to read, without telephone numbers, or submitted by more than one person in the house. Calvary had to do this in a hostile atmosphere generated by an organized petition drive designed to inundate the station and the FCC with complaints, some from areas far beyond the station's blanketing contour. Given Calvary's experiences during the time in question there are any number of reasons why one or more of the complainants would simply be missed in the avalanche.<sup>2/</sup>

31. Accordingly, the Mass Media Bureau is simply wrong when it concludes, as it does in paragraph 79, that Calvary repeatedly and willfully violated the Commission rule concerning blanketing, and that there is no assurance that it will do better. Calvary submits that it did a credible if certainly not perfect job under the most adverse circumstances ever faced by a station in its

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<sup>2/</sup>It should be noted that the Commission, with far more resources at its disposal than Calvary, also made mistakes in attempting to organize and respond to the number of complaints with which it had to deal. For example, in its October 1990 letter it noted that Calvary had reported several complaints as resolved when Calvary in later submissions qualified its initial report. Also, certain complainants names, such as the Adams' and Ellis' (Adams, appendix A, p. 4 and appendix C, p. 1; Ellis, appendix A, p. 9 and appendix C, p. 1), appeared on more than one appendix attached to that letter, even though the appendices were supposed to describe Calvary's differing legal obligations to complainants. This is not meant to criticize or nit pick the efforts of the FCC staff, but only to point out that given the number of complaints that were filed and which had to be responded to, mistakes were inevitable.

situation. No recorded case mentions anywhere near the number of blanketing complaints to cure. No Commission licensee has ever had to cure interference to a television station far beyond that station's grade B contour. No FM station has ever had to restore reception to so many weak television signals. No blanketing situation has required the Commission to make so many decisions, while the controversy was pending, about what sort of equipment was covered under the blanketing rules (satellites, yes; baby monitors and electric instruments, no; boosters installed after the station went on the air, yes). How many licensee are required to respond to hundreds of complaints under a deadline set by the FCC while the FCC, in the same letter in which it requires Calvary to respond to the complaints, states: "[w]e have as yet made no final determination in this case concerning the type of service interruptions that fall within the ambit of the Commission's blanketing rule" (KOKS fdgs. ¶ 30). A certain amount of Calvary's failure and admitted groping must be excused because so much ground over which this controversy has travelled has been new ground both for the licensee and the Commission. Calvary cannot, for that reason, be adjudged guilty of knowingly violating the Commission's rules. Many of the rules applied to Calvary were new--such as the Commission finding that complaints to TV channel 6 reception far beyond the station's grade B contour had to be resolved at Calvary's expense. Given the size of its job and the evolving standard by which its efforts were judged, Calvary clearly does not warrant disqualification under the blanketing issue. A fine or



forfeiture to penalize Calvary for those instances in which it missed responding to complainants is the worst that this record will support.

32. The Mass Media is also wrong in asserting (paragraph 79) that Calvary lied in claiming it resolved the complaints of Ms. Durbin, Gray and Wynn in its September 1989 filing with the Commission. Calvary specifically noted that Mrs. Wynn couldn't get channel 6 on either of her television sets, and that she was dissatisfied. Calvary reported that Mrs. Gray was still not receiving channel 6. In neither instance did Calvary's September report characterize these complaints as resolved. Mrs. Durbin was an instance where Calvary did report a complaint as resolved which was not qualified or corrected in the September 1989 report. Mrs. Stewart testified that Mrs. Durbin's complaint was "just missed," testimony which rings true in view of the number of complaints with which she had to deal.

33. Calvary is also not guilty of a lack of candor in reporting to the FCC that the Smiths wouldn't cooperate. Mrs. Smith didn't cooperate. She was several times asked if someone could come over and install a filter on her outside antenna, and she refused several times: the first time because she claimed she was going to replace the antenna; the second time because she stated that she didn't want Calvary people on her roof; and, the third time because the lawsuit had been filed and Mrs. Smith didn't want her on the property (KOKS fdgs. ¶ 38). Generally, filing a